IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 568 OF 2007
WITH
CRIMINAL APPLICATION NO. 702 OF 2007

Suresh Ramrao Rokade ..Appellant

Vs.

The State of Maharashtra ..Respondent

Mr. S.K. Mali for appellant.
Mr. D.R. More, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : August 16, 2007.

P.C.:

1. As noted in the order dated 20/7/2007 the learned Advocate for the appellant has submitted the copies of depositions in Special Case No. 7 of 2002 and, therefore, this appeal arising from the order of conviction and sentence passed in Special Case No. 7 of 2002 has been finally heard today with the consent of the parties.

2. The appellant-accused faced the trial for the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short the Act) and he has been

convicted for the said offences. He has been sentenced to suffer RI for one year and to pay a fine of Rs.500/- for the offence punishable under Section 7 and sentenced to suffer RI for one year and to pay a fine of Rs.500/- for the offence punishable under Section 13(1)(d) read with Section 13(2) of the Act. He has deposited the fine amount and he was continued on bail. The sentences are to run concurrently.

3. As per the prosecution the accused was holding the post of Assistant Engineer under the Maharashtra State Electricity Board (MSEB), Kalwa and on 25/8/2001 he had visited the house of the complainant Shri Takki Gani Patel who was residing in Time House, 3rd Floor, Shivaji Chowk, Kalwa Naka, Thane (W) and the said flat was in his father's name. The accused visited the said building at about 3 p.m. and checked the electric meter of the complainant. He allegedly informed the complainant that the meter was running slow and, therefore, he would have to pay the arrears of Rs.66,000/- towards the past arrears of electricity charges. When the complainant resisted and said that the meter was running properly, the accused called him in his office at Kalwa on 8/9/2001 at about 12 noon

and repeated that the electric meter was running slow and there would be recovery of Rs.66,000/-. The accused further allegedly told him that if the complainant would pay him Rs.25,000/- then there could be exemption from the recovery. When the complainant informed the accused that the amount of Rs.25,000/- was exorbitant, the accused finally came down and agreed to settle the matter at Rs.10,000/-. The first instalment of Rs.2000/- was to be paid on 10/9/2001 between 2 p.m. to 3.30 p.m. in the office of the accused, second instalment of Rs.3000/- was to be paid within 4-5 days after 10/9/2001 and the remaining amount of Rs.5000/- was to be paid within 10 days thereafter and the complainant agreed for the same. The complainant went to the Anti Corruption Office on 10/9/2001 and lodged the complaint against the accused at Exh.24. PW 5 Pramod Eknath Tambe, API, Park Site Police Station, Mumbai arranged for the raid with the help of two panchas, namely, Shri Nivrutti Bhaurao Ghoderao (PW 3) and Shri Sunil Kamalakar Patil (PW 4). Four currency notes of the denomination of Rs.500/- each were taken to use as trap money and were checked under ultraviolet light. The complainant was instructed not to touch the tainted bribe notes till

the accused demands in his office and he was told to take panch no.1 i.e. PW 3 with him and to give the signal by folding right hand shirt sleeve by left hand. Accordingly, the raiding party reached the office of the accused by a private jeep and halted at some distance away from the office of the accused. The complainant and PW 3 went ahead to meet the accused at about 3.00 p.m. The other members of the raiding party followed them and took their position in the stair-case. The office of the accused was on the first floor and at about 3.30 p.m. the complainant, on the demand of the accused, took out the money and gave it to the accused and the complainant gave a signal to the raiding party. PW 5 Tambe immediately rushed to the office of the accused when he was trying to move out of his office and held him with his wrist and made him to sit in his chair. PW 5 then disclosed his identity and informed the accused that he was caught in the trap and he would be searched. Ultraviolet light was put on and except the trouser of the accused, no glaze was seen anywhere and, therefore, as per the directions of PW 5, panch no.2 i.e. PW 4 took out the bribe money from the pocket of the accused. Two bundles of currency notes were

found, one with four currency notes of Rs.500/- denomination and another of Rs.8000/-. The serial numbers of currency notes of the tainted amount were tallied and traces of anthracene powder were seen on those four currency notes and, therefore, they were kept aside. An additional amount of Rs.850/- was also seized from the purse of the accused. On completion of the investigation, charge-sheet was submitted and the accused pleaded not guilty before the Special Court.

3A. In his statement recorded under Section 313 of Cr.P.C. the accused admitted that the complainant (PW 2) was residing at the given address and electric meter bearing No.9004190000 was in the name of the father of the complainant and for the period from 22/4/2001 to 22/6/2001 an amount of Rs.6,370/- was remitted towards the electricity charges. Rest of the allegations were denied and he filed his written statement in his defence wherein he admitted the incident of raid but stated that he had not demanded any bribe from the complainant and in fact it was the complainant who had thrusted some article in his right pocket and he had questioned in Hindi, "Ye Kya Hai".

4. The prosecution examined in all six witnesses and PW 6 Shaikh Javed Ismail, Dy.S.P., Anti Corruption Bureau, Thane had arrested the accused on 10/9/2001 after the raid, as per the arrest panchanama at Exh.33. He further stated that on 10/9/2001 the house of the accused was searched. On 12/9/2001 some panchas were called in the office of ACB and sealed packet containing anthracene powder bottle, cotton swab and a piece of paper was shown to them when it was in a sealed condition and the seal was broken by drawing a panchanama at Exh.38. On 28/3/2002 the sanction order under Section 19 of the Act was received and thereafter on 19/4/2002 the charge-sheet was filed against the accused. PW 1 Shri Anil Narayan Deshkar had retired as Chief Engineer from MSEB and from September, 2000 to September, 2003 he was the Joint Secretary - Technical in the Board. He stated that on registration of C.R. No.II-87/2001 at Kalwa Police Station, the ACB had submitted a proposal for sanction and on perusal of the papers he was satisfied that there was a prima facie case made out for granting sanction under Section 19 of the Act. He was the appointing authority for the accused and,

therefore, he granted sanction by his order dated 28/3/2003.

5. On the point of the charge having been established against the accused, the prosecution case is based on the evidence of PW 2 Takki Patel - the complainant, PW 3 Nivrutti Ghoderao - panch witness, PW 4 Sunil Patil - panch witness and PW 5 Pramod Tambe - API. The complainant stated in his depositions that on 25/8/2001 the accused had gone to his house at about 3 p.m. along with the staff members and checked the electric meter and informed him that it was running slow and the complainant would have to deposit Rs.66,000/- against the previous recovery. When the complainant protested, he was asked to come to the office on 8/9/2001 by the accused. When the complainant met the accused in his office, he demanded an amount of Rs.25,000/- to be paid to him personally for settling the arrears of Rs.66,000/- and the deal was finalised at Rs.10,000/- but to be paid in three instalments. The first being of Rs.2000/- to be paid to the accused in his office on 10/9/2001 between 2 p.m. to 3.30 p.m. He stated that he had gone to the office of ACB and lodged the complaint (Exh.24). He

admitted the contents therein. Anti Corruption Officer PW 5 Tambe had called two panchas i.e. PWs 3 and 4 and after making the necessary arrangements, the tainted four notes of the denomination of Rs.500/- each were handed over to him and as instructed by PW 5 he went to the office of the accused along with PW 3 at about 3 p.m. As there were some other persons waiting in the office of the accused, he waited for them to leave. He handed over the amount of tainted money when the accused demanded the same and gave a signal to PW 5 who was waiting outside the office of the accused but on the stair-case. The amount was accepted by the accused and kept in his right hand pocket of the trouser. This part of the depositions remained unchallenged in his cross-examination conducted by the defence counsel. He admitted in his cross examination that he had received the bill for the period from 25/8/2001 to 25/9/2001 and he had not paid the said bill and on 10/9/2001 his electric meter was not changed. He also admitted in his cross examination that when he entered the office of the accused along with PW 3, two persons were already sitting and thus in all five persons were present. After five minutes the accused asked those two persons

to go out of his cabin and PW 3 was also asked to wait outside the cabin. He also admitted that on 10/9/2001 he had been to the MSEB office to pay the electricity bill and thereafter he went to the office of ACB. He was in the ACB office till 4.15 p.m. after the trap. He denied the suggestions in his cross examination that the accused never demanded the bribe from him on or before 10/9/2001. He also denied that when the accused was going out of his cabin, he thrusted tainted money in his pant pocket. PW 3 in his depositions stated that after reaching the office of the accused along with the complainant, he entered the cabin of the accused along with the complainant and there were already two other persons who left after some time. The door of the cabin was slightly open and he was able to hear the conversation between the complainant and the accused. The accused had asked the complainant whether the new meter was installed and then said "mera paisa laya kya" and the complainant replied that "ha sahab, aapke kehne ke mutabik 2000 rupaye laya". The accused then asked him to give it and the complainant handed over the tainted money by his right hand and held it before the accused. The accused took the same tainted money with

his right hand and kept in the right side pocket of his pant. The complainant thereafter came out of the cabin and gave a signal as agreed. The accused was to come out of his cabin and when he came near the door of the cabin, the members of the raiding party rushed and PW 5 held the accused by his wrist. Article No.1 the currency notes which were tainted were identified by him before the court and Article Nos.2,3 and 4 the other currency notes which were not tainted were also identified by him before the court. PW 4 is the witness for the panchanama at Exh.32. He stated that after the accused was held by PW 5, he was asked to take out the bribe money kept in the right side pant pocket and dark was created in the cabin. Under the U.V. rays there was no glow on their hands or clothes. Then the hands of the accused were seen under U.V. rays. The blue glaze was seen on his right hand thumb, first and middle finger and on the border of his right side pant pocket. He identified the four currency notes of the tainted money before the court and which were found in the right hand side pant pocket of the accused. He also identified his signature on the envelope (Article No.2) in which the said notes were kept after seizure in the trap. In

his cross-examination he admitted that at the time of the arrest panchanama the accused was wearing a brown colour lining terricot pant and he was having an amount of Rs.850/- in a leather purse in the rear pocket along with other miscellaneous papers. He also reiterated that there were traces of anthracene powder on the right side pant pocket, on the border and inside the pocket. At the time of the arrest panchanama the pant of the accused was inspected under the ultraviolet rays and no other articles or cash. He also stated that at the time of the raid he was standing on the stair-case of the first floor and from that place he could see the inner portion of the cabin of the accused and the time was about 3 p.m. He also stated that the complainant and panch witness were not visible from that place, but at the same time the persons standing outside the cabin of the accused could be seen by him. He also admitted that after the complainant gave the agreed signal, the raiding party rushed to the cabin of the accused and at that time the accused was coming outside. He denied the suggestion that the second bundle of Rs.8000/- was in the left side pocket of the accused and he reiterated that it was in the right hand side pocket along with

the tainted money and the amount of Rs.8000/- consisted of some currency notes of the denomination of Rs.500/- and some of Rs.100/-. The minor inconsistencies in the evidence of PW 3 Ghoderao on the point that he had heard the conversation between the complainant and accused and that the door of the cabin of the accused was slightly opened when PW 4 heard the conversation were not mentioned in the post trap panchanama and this would in no way affect the prosecution case on the face of the corroboration through the evidence of PW 2, PW 4 and PW 5.

. PW 5 Tambe, API, in his depositions again described the steps taken by him after the complainant lodged his complaint and the entire raid operation. He supported the testimony of PWs 2, 3 and 4. He further stated that the hands and clothes of the complainant were also inspected under ultraviolet light and there were traces of anthracene powder found on his right hand fingers and palm. At the same time when the hands of the accused were inspected under the ultraviolet light, the traces of anthracene powder were also found on his hand. He admitted the post trap panchanama at Exh.32 and identified his

signature. He further stated that the copy of the panchanama was given to the accused and he had signed having received the same. He admitted that he had lodged the complaint at Exh.54 and he sent his report along with the complaint at Exh.45. He identified Article 5, the pant of the accused before the court and which was recovered after the arrest of the accused on the date of the raid. He identified the accused before the court. In his cross-examination he admitted that he did not verify the veracity of the complaint made by the complainant nor did he check the seal of the electric meter. He further stated in his cross examination that the ACB office where the panchas were called is at a distance of 4-5 kms. from his office and the requisition letter at Exh.43 was sent through the constable. He denied the suggestion that the panchas were habitual and professional panchas. He also denied the suggestion that the complaint was registered after the arrival of the panchas. He also denied that he had gone to the office of the accused along with the complainant in the complainant's car and he reiterated that he had gone by a private jeep. He further stated that the members of the raiding party had taken the position in

the stair-case leading to the first floor. He further reiterated that the amount of Rs.8000/- was found in the right hand side pant pocket of the accused.

6. The evidence of these prosecution witnesses thus goes to show that on the basis of the complaint made by PW 2 a trap was arranged and conducted in which the accused was found demanding and accepting the amount of Rs.2000/- and four currency notes of the denomination of Rs.500/- each which was tainted amount was recovered from his right hand pant pocket along with Rs.8000/- which was not part of the tainted money on 10/9/2001 at about 3 p.m. and the accused was caught raid-handed in the trap. It is also proved from the evidence of these four witnesses that the amount demanded and accepted by the accused was for gratification and for lowering the purported amount of arrears of electricity bill or waiving it off. The procedural requirement of sanction under Section 19 of the Act have also been duly proved.

7. On the point of sentence it is required to be noted that in addition to the trap money that was recovered from the right hand pant pocket of the

accused, a sum of Rs.8000/- was also found in the said pant pocket of the accused and an amount of Rs.850/- was found in his purse. The complainant clearly stated that the accused had called him to the office to pay the first instalment of Rs.2000/- out of the settled amount of Rs.10,000/-. These events cannot rule out the possibility of one coming to the conclusion that the accused was involved not in the trap incident alone and perhaps he was used to collecting money by way of gratification. No explanation has been furnished by him regarding the additional amount of Rs.8000/- cash found in his pant pocket, even in his statement recorded under Section 313 of Cr.P.C. except denial. Section 7 of the Act states that a public servant who accepts or obtains or agrees to accept or attempts to obtain from any person, for himself any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act shall be punishable with imprisonment which shall not be less than six months but which may extend to five years and shall also be liable to fine. The accused is undoubtedly a pubic servant. As per Section 13(1)(d), a public servant is said to commit the offence of

criminal misconduct, if he, by corrupt or illegal means, obtains for himself a pecuniary advantage or by abusing his position as a public servant, obtains for himself any pecuniary advantage. Section 13(2) of the Act states that any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine. There is no appeal filed by the State for enhancement of the sentence. On the face of the prosecution case having been proved beyond reasonable doubt against the appellant-accused, there is no reason to interfere with the order of sentence awarded by the trial court against the appellant-accused.

8. In the premises this appeal fails and the same is hereby dismissed. The order of conviction and sentence passed by the Special Judge (P.O.C. Act), Thane in Special Case No. 7 of 2002 on 7/6/2007 is hereby confirmed. The appellant-accused shall surrender to his bail bonds within two weeks from today so as to undergo the sentence.

9. In view of the above Criminal Application No. 702 of 2007 does not survive and shall stand disposed as such.

(B.H. Marlapalle,J.)